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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/147,036	12/15/1998	JOCHEN MAURER	P564-8019	1165

6449 7590 05/16/2005

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EXAMINER

FORD, VANESSA L

ART UNIT PAPER NUMBER

1645

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/147,036	Applicant(s) MAURER ET AL.	
	Examiner Vanessa L. Ford	Art Unit 1645	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on 3 May 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see Advisory attachment. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: NONE.
- Claim(s) objected to: NONE.
- Claim(s) rejected: 1-3, 9-15, 19, 41, 43-53 and 55-59.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: Advisory attachment.

Continuation of 11. does NOT place the application in condition for allowance because: the rejections have been maintained and arguments regarding pending claims have been addressed previously.

Advisory Action Attachment

1. Applicant's amendment filed April 6, 2004 is acknowledged.
2. Applicant's amendment is not entered because the claims as amended would require further consideration and require new searches. As amended the claims contain newly added limitations that were not considered or searched in the previous Office actions. Specifically, claim 15 raises new issues under 35 U.S.C. 112, second paragraph and potentially, new matter issues under 35 U.S.C. 112, first paragraph. The claim limitations as amended have not been searched or considered before the submission of the After Final Amendment.

Objections/Rejections Maintained

3. The Applicant's arguments regarding the rejection of claims 1-3, 9-15, 19, 41, 43-53 and 55-59 under 35 U.S.C. 112, first paragraph (Biological Deposit) were addressed on pages 3-6, paragraph 4 of the Final Office Action.
4. The Applicant's arguments regarding the rejection of claims 1-3, 9-15, 19, 41, 43-53 and 55-59 under 35 U.S.C. 112, first paragraph (Enablement) were addressed on pages 6-8, paragraph 5 of the Final Office Action.

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5. The Applicant's arguments regarding the rejection of claim 1 under 35 U.S.C. 112, second paragraph were addressed on pages 9-10, paragraph 6 of the Final Office Action.

6. The objection of claim 1 on page 10, paragraph 7 of the Final Office Action is maintained.

7. The rejection of claims 1-3, 9-15, 41, 43-53 and 55-59 under 35 U.S.C. 112, second paragraph on pages 10-11, paragraph 8 of the Final Office Action is maintained.

8. The rejection of claims 15 and 19 under 35 U.S.C. 112, second paragraph on page 11, paragraph 9 of the Final Office Action is maintained.

Status of Claims

9. No claims are allowed.

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
Conclusion

10. Any inquiry of the general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Office Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for the Group 1600 is (703) 872-9306.

Any inquiry concerning this communication from the examiner should be directed to Vanessa L. Ford, whose telephone number is (571) 272-0857. The examiner can normally be reached on Monday – Friday from 9:00 AM to 6:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (571) 272-0864.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Vanessa L. Ford
Biotechnology Patent Examiner
May 9, 2005


NITA MINNIFIELD
PRIMARY EXAMINER